

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEREK SYLVESTER,

Petitioner,

2:03-cv-1301-GEB-KJM-P

vs.

SCOTT P. RAWERS,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

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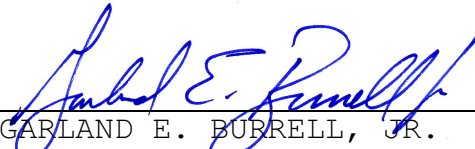
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1 For the reasons set forth in the magistrate judge's February 8, 2008 findings and  
2 recommendations, petitioner has not made a substantial showing of the denial of a constitutional  
3 right. Accordingly, a certificate of appealability should not issue in this action.

4 IT IS SO ORDERED.

5 Dated: April 4, 2008

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8 GARLAND E. BURRELL, JR.  
United States District Judge